

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF Office Workers

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

I have read Notice 441 and am requesting:

☐ Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"

☐ Delay based on an on-going transaction

☐ 90 day delay

For IRS Use Only:

Facts of Case

The firm is a law office and engaged the worker through a temporary employment agency to perform secretary services on temporary basis for specific project. The firm assigned the worker services to perform. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker performed services on a flexible schedule during the firm's hours of operation. The worker performed the services at the firm's place of business and home per the firm. They disagreed on if the worker was required to perform the services personally. The firm and the temporary employment agency entered into a working relationship agreement concerning the services the worker performed.

Both parties provided computers and the firm a report was also indicated to what the firm provided. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker an hourly wage and no advances were allowed. The firm was paid through customers. The firm did not carry workers' compensation insurance. The working relationship agreements determined the level of payment for the services. The firm paid the worker directly and paid the employment agency a fee to providing the worker to perform the services.

There were no contracts between the firm and worker. The firm provided no benefits. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The firm did not know if the worker advertised as a business. The worker indicated she did no advertising to the public as a business. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The relationship ended when the project was completed.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. The firm allowed the worker to perform services assigned on a flexible schedule at the firm's place of business and from home. The worker completed the project assigned by the firm to the worker to perform under the firm's agreement with the temporary employment agency. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no financial business investments and no control over profit and loss due to significant on-going business capital outlays being made. The firm paid the worker an hourly wage directly and paid the employment agency a fee according to the agreement with the employment agency. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and worker. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising as a business to the public. The worker personally performed assigned services until completed for the firm.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Based on the autonomy of the working relationship it is determined that the worker was an employee under common law.